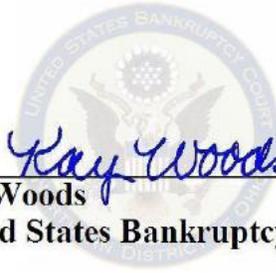


IT IS SO ORDERED.

Dated: May 6, 2013
02:48:34 PM



Kay Woods
 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

JEFFREY D. BARNETT and
MELISSA J. BARNETT,

Debtors.

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CASE NUMBER 12-42737
CHAPTER 13
HONORABLE KAY WOODS

 ORDER SUSTAINING OBJECTIONS OF (i) THE UNITED STATES TRUSTEE;
 AND (ii) THE DEBTORS TO CLAIM NO. 4-1 FILED BY
 BRANCH BANKING & TRUST CO.

This cause is before the Court on (i) Objection of the United States Trustee to Claim No. 4-1 Filed by Branch Banking & Trust Company ("UST Objection") (Doc. # 11) filed by the United States Trustee for Region 9, Daniel M. McDermott ("UST"), on November 28, 2012; and (ii) Objection to Proof of Claim Filed by Branch Banking & Trust Company ("Debtors' Objection") (Doc. # 22) filed by Debtors Jeffrey D. Barnett and Melissa J. Barnett

on April 2, 2013. The Debtors filed a voluntary petition pursuant to chapter 13 of Title 11, United States Code, on November 8, 2012. That same day, the Debtors filed Chapter 13 Plan ("Plan") (Doc. # 2), which provides for the surrender of real property described as 2528 Chestnut St., Girard, OH 44420 ("Real Estate") and which also provides for a 100% dividend to creditors. (Plan, Art. III.) The Debtors list Bb&T Mtg [sic] as the secured creditor for the Real Estate. (*Id.*)

On November 26, 2012, Branch Banking & Trust Company ("Branch Bank") filed a proof of claim that was denominated as Claim No. 4-1. Claim No. 4-1 asserts a secured claim in the amount of \$123,599.71 with 6.25% fixed interest, secured by the Real Estate. Attached to Claim No. 4-1 is a Note in the amount of \$96,900.00, which bears an "Original" stamp and is dated October 14, 2005. The Note, which is signed by Jeffrey D. Barnett as borrower, identifies Freedom Mortgage Corporation d/b/a Freedom Home Mortgage Corporation ("Freedom Mortgage") as the lender and the Real Estate as the property address. A Mortgage for the Real Estate, which is also attached to Claim No. 4-1, lists the Debtors as the borrowers and Freedom Mortgage as the lender and is dated October 14, 2005. Also attached to Claim No. 4-1 is an Assignment of Mortgage from Mortgage Electronic Registration Systems, Inc. as nominee for Freedom Mortgage Corporation dba Freedom Home Mortgage Corporation, its

successors and assigns, to Branch Banking and Trust Company. The Assignment of Mortgage lists the Real Estate as the property address and is dated March 23, 2010. Claim No. 4-1 does not contain an allonge or assignment of the Note.

The basis for the UST Objection is that "the note filed with the claim is made payable to Freedom Mortgage and is not endorsed." (UST Obj. at 1.) "The 'NOTE' attached to the claim does not show that Branch Banking & Trust Company is a creditor. Accordingly, the claim should be disallowed and denied." (*Id.* ¶ 8.)

The basis for the Debtors' Objection is that Branch Bank is not entitled to a secured claim because the Debtors are surrendering the Real Estate. The Debtors request that Claim No. 4-1 be disallowed and that Branch Bank be allowed an unsecured non-priority claim only if a deficiency claim is timely filed.

Branch Bank filed Response to United States Trustee's Objection to Claim of Branch Banking & Trust Company (Property Address: 2528 Chestnut Street Girard, OH 44420) ("Branch Bank Response") (Doc. # 16) on December 28, 2012. The Branch Bank Response alleges that (i) Branch Bank purchased the "loan" from Freedom Mortgage on October 2, 2006; (ii) on September 28, 2012, the Trumbull County, Ohio Court of Common Pleas entered Judgment and Decree in Foreclosure in favor of Branch Bank against the

Debtors relating to the Real Estate; and (iii) a court of competent jurisdiction has determined that Branch Bank has established its rights under the Note and Mortgage. The Branch Bank Response does not provide any information concerning the purchase or assignment of the Note.

More than 30 days have passed since the Debtors filed the Debtors' Objection, but Branch Bank did not respond thereto.

The Court held a hearing on the UST Objection on January 17, 2013. Scott R. Belhorn, Esq. appeared on behalf of the UST and Romi T. Fox, Esq. appeared on behalf of Branch Bank. At the hearing, both counsel agreed that, because the Debtors intended to surrender the Real Estate, Branch Bank would not be entitled to a secured claim, but would only be entitled to assert a general unsecured claim for the deficiency balance, if any. The parties further agreed to brief the issue of standing; provided, however, if Branch Bank amended Claim No. 4-1 to assert an unsecured deficiency claim, the UST would withdraw the UST Objection. With respect to its objection, the UST took the position that the Trumbull County Judgment and Decree in Foreclosure does not preclude this Court from determining Branch Bank's standing as a creditor. The Court set a briefing schedule that required the UST to file a brief more fully explaining its position by April 2, 2013, and Branch Bank to file a response within three weeks thereafter.

Branch Bank neither amended Claim No. 4-1 nor filed a new proof of claim to assert an unsecured deficiency claim. As a consequence, the UST Objection has not been withdrawn. Neither the UST nor Branch Bank briefed the issue of Branch Bank's standing as a creditor.

The claims bar date in the Debtors' case was March 19, 2013 ("Bar Date"). (See Doc. # 8.) The Debtors' Plan was confirmed by Confirmation Order (Doc. # 21) entered on February 1, 2013. The Confirmation Order requires a creditor whose claim is secured by property to be surrendered and liquidated to file a proof of claim for the deficiency balance the later of the Bar Date or "ninety (90) days after entry of a final Order directing the surrender or abandonment of the collateral." (Conf. Order ¶ 16.) The Confirmation Order constitutes a final order directing surrender of the Real Estate. Accordingly, Branch Bank was required to file a proof of claim for the deficiency balance (to be estimated in good faith if the Real Estate was not liquidated in the 90-day time period) no later than May 2, 2013.

Although the UST did not brief this issue, the Court finds that it need not reach the issue of whether Branch Bank is a creditor of the Debtors because Branch Bank failed to assert a claim for the deficiency balance within the required time period and is now time-barred from asserting such claim. The Debtors

are correct that since they are surrendering the Real Estate, Branch Bank would have been entitled only to a general unsecured claim for the deficiency balance rather than a secured claim for the balance due pursuant to the Note. As a consequence, the Court hereby sustains (i) the UST Objection (although on other grounds); and (ii) the Debtors' Objection. Claim No. 4-1 filed by Branch Bank is disallowed and denied in its entirety.

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